

# **WHAT'S INTERROGATION GOTTA DO WITH IT? CROSSING LAW ENFORCEMENT IN CONFESSION CASES**

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## **I. The Reid Method of Interviewing and Interrogation:**

### **Part One: Amateur Psychologist - The Behavior Description Interview**

- A. A short (20-45 minutes) non-accusatory interview used to determine if suspect is “truthful”.
- B. As taught by the Reid program – 17+ “Behavior Provoking” questions, interviewer makes truthfulness decision based on assessment of verbal and non-verbal responses to questions.
- C. The 17 Questions:
  - 1. What is your understanding of the purpose of the interview.
  - 2. We are investigating \_\_\_\_, if you did \_\_\_\_ you should tell me now.
  - 3. Do you know who did \_\_\_\_?
  - 4. Who do you think did \_\_\_\_? Tell us your suspicion even if wrong. Promise confidentiality.
  - 5. Is there anyone you know who you would rule out?
  - 6. How do you feel about being interviewed for this?
  - 7. Do you think that \_\_\_\_\_ really occurred? If suspect was accused: Is accuser lying?
  - 8. Who would have the best opportunity to do \_\_\_\_?
  - 9. Why do you think someone did \_\_\_\_?
  - 10. Did you ever think about doing \_\_\_\_ even though you didn't?
  - 11. Why wouldn't you do something like \_\_\_\_?
  - 12. What do you think should happen to the person who does \_\_\_\_?

13. How do you think the investigation results will come out for you? Or willingness to take polygraph and how they think it will turn out.
  14. Do you think the person who did \_\_\_\_ deserves a second chance?
  15. Alibi/account of events
  16. Did you tell anyone you were here today? Who? etc.
  17. Bait question. (see sec. II)
- D. Analyzing the Verbal Responses: The Reid school claims that the interviewer can evaluate the verbal and non-verbal answers and accurately determine if the subject is lying.
1. Truthful subjects: Composed, interested, concerned, realistic, cooperative, direct & spontaneous responses, specific denials and use of accurate language, open & helpful, sincere, confident in investigation outcome, voice desire for punishment of perpetrator.
  2. Deceptive subjects: Passive denials, "Guilty" phrases such as: "Oh you're kidding"; "to the best of my memory"; "that's as far as I can recall"; confused; disinterested; mental blocks; irrational; 1-2 word answers; blames others; contradictory explanations, lying by referral (I already told...); lack confidence in investigation results; minimizes offense; endorses light punishment or feels offender should have a second chance; overly polite; uses permission phrases; lack of emotion.
  3. Denial language: "I didn't..." (truthful) vs. "I did not..."(deceptive).
  4. Both may exhibit anger, surprise, nervousness, fear.
- E. Analyzing the Non-Verbal Responses: A Foray into Junk Science
1. Rate of Speech: truthful increase speed, raise vocal pitch; deceptive decrease speech rate, pitch and clarity fall off, stop/start their responses.
  2. Posture & Body:
    - a. Truthful are upright, open, relaxed, lean forward occasionally, frontally aligned with interviewer, casual posture changes.
    - b. Deceptive people: retreating, slouching, frozen, head & body slump, guarded & defensive body language such as hand over mouth or crossed arms, erratic & rapid posture changes, runners position, "erasure" signs after false denial, dry mouth.
  3. Eye contact- in normal conversation eye contact 30-60% of the time; deceptive avert gaze.

4. Neurolinguistic Programming: Subjects who break gaze/look to the right are liars, those who look left are truthful.

## **II. The Reid Method of Interviewing and Interrogation: Part Two: Con Artist - The Bait Question**

- A. Reid school uses bait question as final question in the interviewing process. They evaluate answer using same criteria as other interview questions as well as whether bait question causes suspect to change their version of events and if they give a delayed response to the bait question.
- B. Involves the use of an evidence ploy- claim of real or false evidence.
- C. They “educate” suspect before they bait – e.g. tell suspect that science will allow them to match physical evidence in suspect’s possession to crime scene evidence. This may involve the use of props such as thick file, news articles about other cases, etc.
- D. Investigator must be careful to use bait that suspect can’t see through -suspect should be told the investigation is ongoing & interviewer should not pin self down on having the evidence (that suspect may ask to see).
- E. They may phrase bait questions as “Is it possible that...” in order to testify that they didn’t lie to suspect but asked suspect a hypothetical.
- F. Bait Question Examples:
  1. Would there be any reason that person A says they saw you take the money?
  2. Would there be any reason why the footprints taken in the mud at the scene would match yours? Why would the mud on your sneakers match the DNA of the mud where the crime occurred?
  3. Why would a video surveillance tape of the building that burned down show you in the area?
  4. Is there any reason why the blood found at the scene will show your DNA when it comes back from the lab?
- G. Bait Question concludes Interview - Investigator leaves briefly, may confer with colleagues.

## **III. The Reid Method of Interviewing and Interrogation: Part Three: Actor and Father Confessor - Interrogation**

- A. The “Nine Steps”
  1. Directly and positively present the suspect with the statement that he is considered to be the perpetrator.

- a. “Our investigation shows that you are the person who\_\_\_\_\_”.
- b. Begin standing, four to five feet from suspect (social zone).
- c. Avoid realistic words –e.g. “You took” (not stole); “you made her have sex” (not raped); “you caused death” (not murdered).
- d. Firm tone of voice.
- e. Transition: from dominance to empathy, sit down, move closer, begin step two.

## 2. Theme Development: The essence of the Reid technique

- a. Reid Official Explanation: Express supposition about reasons for crime’s commission whereby the suspect is offered a moral excuse (affix moral blame on the victim, accomplice, circumstances, etc.).
- b. Theme centers on how interrogator believes that suspect’s actions are not so bad and juxtaposes it against more aggravated conduct.
- c. Storytelling that contains theme to get suspect to buy into theme.
  - i. Use of fictitious or true stories in which interrogator relates that he worked on a similar case, using minimization, person denied crime at first, then a “happy ending”, after person confessed.
  - ii. Use of first person themes where interrogator tells of similar experience, tries to bond with suspect through this story.
  - iii. Use of “role reversal” – put suspect in position of decision maker- two people who committed similar crime – one had the “prove it” attitude, other was sorry and explained circumstances – ask “who would you want to talk to?” and point out that suspect is acting like the “prove it guy”. Avoid making suspect the judge/jury – it just reinforces legal consequences. No explicit mention of leniency.
- d. Empathetic Tone.
- e. Moving closer to suspect.
- f. Give suspect the impression that it is helpful to confess to the thematic behavior that is being offered. This is coupled with repeating the bait evidence and interrogator’s assertions of absolute confidence that suspect is guilty and cornered.
- g. Use of language which implies that interrogator will be able to help the suspect if s/he confesses – but the interrogators are trained to avoid legally explicit terms:
  - i. “We’re here to work with you” - not “to help you”.

- ii. “Once they told the truth, the weight of the world was off their shoulders” or “they learned from the experience”- not a specific outcome.
- iii. Tell suspect they may be afraid of jail but either way, a decision will have to be made and here is their chance to tell their side of story.

#### h. Theme Examples

- i. Theft –Needed \$ for a good reason, being exploited by boss, it began as borrowing and you intended to repay.
  - ii. Sex Assaults- blame victim’s behavior, style of dress, overly mature or seductive child, poor parenting.
  - iii. Homicide – deceased began a fight, was a bad person, drug dealer, stole from you.
  - iv. All cases – suspect was intoxicated, under stress, not acting normally.
- i. When suspect denies – “I’m thinking you did (worse thing) and I’ll have to investigate.

### 3. Handle Denials

- a. Cut off suspect’s repetition or elaboration of denial and return to theme. Use of permission phrase, e.g. “Can I just say this”.
  - b. Belief is that the more a person is allowed to deny the crime, the harder it will be to get an admission.
  - c. “I don’t even have to or need to talk to you to prove this but I thought I’d give you a chance to tell your side of the story...”
  - d. Dominate – cut them off.
  - e. Reveal evidence – or false evidence- if absolutely necessary.
  - f. “I think you’re stonewalling me- I thought well of you before but now I’m thinking poorly of you.”
  - g. Use the negative side of the alternative question.
4. Overcoming Objections. Not the same as a denial – e.g. “I couldn’t have done this, it violates my religion”. Reid advocates listening and incorporating into the theme.
5. Procurement and retention of the suspect’s full attention – get closer, pat shoulder, act sympathetic.
6. Handle suspect’s passive mood. Interrogator views this as the opportunity to move in and get the admission by use of step seven.

**7. Present the alternative question.**

- a. Two alternatives – a “bad” one and a “lesser” one based on the theme. Both are guilt choices.
- b. The “bad” reason must be bad enough that suspect could not admit to it and the desirable alternative seems good.
- c. When suspect denies here, return to theme.

**8. Have suspect orally relate details. An admission is not enough.**

- a. Continue to avoid legal terminology
- b. Get suspect committed to admission and description of offense
- c. Obtain details.
- d. Reid stresses: Must obtain dependant and independent evidence for confession to be valid. (note: they acknowledge that their interrogation tactics can lead to false admissions; they claim however that strict use of technique, including this step, will prevent false confessions)<sup>1</sup>.
  - i. Dependant = Facts that only true perpetrator would know, must have been withheld from suspect.
  - ii. Independent = something that interrogator didn't know, which can now be verified.

**9. Convert the statement to writing.**

- a. Interrogator should write it.
- b. Deliberate errors to be corrected.
- c. Letter of apology

**B. Other suggestions**

- 1. Conduct interrogation in private, without distractions.
- 2. Investigator should dress in “plain clothes”- no uniform or conspicuous signs of being in law enforcement.
- 3. Know the details of the crime.
- 4. Learn details about the suspect during the interview. Appeal to their personal values.

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<sup>1</sup> “The Importance of Accurate Corroboration Within a Confession”, December 2004 monthly investigator tip at [www.reid.com](http://www.reid.com).

5. Keep pencils and paper out of sight during interrogation (it reminds the suspect of legal significance).
6. Have Miranda warnings given by someone other than the interrogator.
7. Physical proximity to suspect shifts at critical moments.
8. Seek admission of lying about some incidental aspect of the event.
9. Have the suspect put himself at the crime scene or in contact with the victim or occurrence.
10. If suspect has fear of embarrassment, promise that *you* will not tell the person.
11. Play one co-defendant against the other.
12. Use leading (cross examination) questions to get agreement on as much as possible, bringing them down the pathway of “yes” answers.
13. Compliment suspect on their past acts and traits.
14. If suspect gets up to leave, talk to empty chair.

#### **IV. Examples of real world police tactics**

1. Fabricated forensic and eyewitness evidence.
2. Polygraph & Voice Stress Analyzer
  - a. Suspect should not be given polygraph the same day following interrogation. The results may be compromised by over stimulation of the suspect and there is a greater likelihood of an inaccurate finding of untruthfulness.
  - b. Polygraph results showing untruthfulness are frequently used as an interrogation technique.
  - c. Voice stress analyzer – a new darling of law enforcement – is no more reliable than chance at detecting deception.
3. Telling a suspect who says, “I know I didn’t do it, I have no memory of it” that they were on drugs, alcohol or are so upset that they’ve suppressed the memory of the offense.
4. Alternating “good cop – bad cop”.
5. Relay interrogation.
6. Sleep Deprivation.

## **V. Why Interrogation Techniques Work – and Sometimes Lead to False Confessions**

### **A. Combination of Interrogation Techniques:**

1. Police have very strong case –baiting, presentation of true & false evidence. Create feeling of hopelessness.
2. Theme & Alternative Question – contrasts far worse maximized offense with minimized version of offense that suspect is offered. Leniency may not be explicitly promised but it is implied.
3. Relentless Interrogation – over long period of hours and days.

### **B. Suspect Factors:**

1. Studies have shown that vulnerable persons, such as juveniles, mentally retarded or mentally ill are much more vulnerable to police interrogation techniques, however
2. The Reid techniques and its variations work with “normal” people as well.

C. DNA Exonerations and False Confessions are recognized to some degree by the Reid organization. See for example “False Confession Cases: The Issues”, April 2004 monthly investigator tip at [www.reid.com](http://www.reid.com).

## **VI. Analyzing False Confessions**

### **A. Two Types of Interrogation Induced False Confessions.**

1. Compliant False Confession – the suspect comes to the point of hopelessness and decides to give a false confession.
2. Persuaded False Confession – the interrogator convinces the suspect that they committed a crime about which they have no memory.

### **B. Examine the confession**

1. Fit between confession and crime – are there “dependant and independent facts”.
2. Linguistics. Examine confessions in the conditional or subjunctive tense e.g. “I must have... I would have done...”
3. Review confession line-by-line. What was: what is true what was already known, what is incorrect, what was coached, what was manipulated, what is “cop talk”, what was or wasn’t followed up on.



## **VII. Defending a Confession Case**

- A. Educate yourself about how police interrogate suspects and get confessions.
  - 1. Read literature about police interrogation methods.
  - 2. Learn the interrogation methods used in your jurisdiction.
  - 3. Obtain police training materials by subpoena or open records.
  - 4. Consult with recently retired police officers.
- B. Preparation with your client.
  - 1. Interview the client thoroughly about the interrogation process as early as possible in the case. Have the client prepare a time line regarding the interrogations and obtain details about the interrogations. (See companion outline on client interviewing).
  - 2. Have your client evaluated by a mental health professional to see if s/he is particularly susceptible to police interrogation methods. Does the client comprehend Miranda enough to knowingly and intelligently waive rights.
- C. Gather evidence to corroborate as much as you can about what the client tells you about the interrogation.
- D. View and document the scene.
  - 1. View the interrogation room(s) just as you would any other crime scene. Measure and photograph the rooms.
  - 2. If client was subjected to multiple interrogations and not taken to jail cell where s/he could sleep, document jail cell proximity and get photos of that area as well.
  - 3. Investigate whether any administrative rules concerning jail conditions were violated.
- E. Research the officers involved.
  - 1. Compare notes with other attorneys in the jurisdiction about the practices of the police detective in obtaining confessions. Get transcripts of other suppression hearings where the detective(s) testified.
  - 2. Research officer using legal search engines.
  - 3. Search public records.
    - a. Open records of department discipline.

- b. Civil cases as a party.
- 4. Ask prosecutor and move court for Brady/Kyles evidence, e.g. to obtain police personnel file to establish officer's practice of obtaining confession by use of force, violence or threats or other officer misconduct.
- F. Know the law of voluntariness in your jurisdiction: Review case law & judicial benchbooks. Some typical factors considered by court are: lengthy & repeated interrogations, suspect held incommunicado, sleep deprivation, physical discomfort, psychological discomfort, medical problems, mental health issues, intimidation, relays of interrogators, misleading suspect, denial of right to counsel.
- G. Give notice to the Court that this is not another routine suppression hearing. File a well-researched motion drafted particularly for the case.
- H. Move to exclude the confession because it wasn't tape-recorded.
  - 1. Tape recording of the entire interrogation is required in Alaska and Minnesota. Alaska held that recording is required by state due process. Stephan v. State, 711 P.2d 1156 (Alaska, 1988); the Minnesota Supreme Court instituted mandatory recording as an exercise of the court's supervisory power to insure the fair administration of justice. State v. Scales, 518 N.W. 2d 587 (Minn. 1994). Taping juvenile interrogations mandatory, State v. Jerrell C.J. 2005 WI 105.
  - 2. Many states approve of the practice of recording interrogations even though they don't require it. Gail Johnson, "False Confessions and Fundamental Fairness: The Need for Electronic Recording of Custodial Interrogations", 6 Public Interest Law Journal 719, 747 (1997); Drizin & Reich, "Heeding the Lessons of History: The Need for Mandatory Recording of Police Interrogations To Accurately Assess the Reliability and Voluntariness of Confessions", 52 Drake L. Rev. 619 (2004).

### VIII. Commonwealth v. DeGiambattista, 813 N.E.2d 516 (MA 2004).

- A. Facts - a classic case of Reid Interrogation techniques in an arson case.<sup>2</sup>
  - 1. Initial period of conversational mild mannered questioning.
  - 2. Confrontation statement includes telling him his statements are inconsistent with other witnesses; that they have witnesses who saw him at the scene.
  - 3. Bait Question: Other officers come in with thick "case file" and videotapes and tell suspect: "If I told you that somebody at Paolini Construction was under surveillance by an insurance company for a workers' comp fraud case, is there any reason you would show up on that videotape?"

<sup>2</sup> This is the police version, accepted as factual by trial and appellate court. The defense version of this is much more aggravated.

4. Theme Development - downplaying crime by pointing out no one hurt, deplorable condition of premises, officer can relate to and understand defendant's emotions of anger at building landlord.
  5. Continued theme - suspect didn't mean to hurt anyone, crime is product of stress, alcohol consumption, understandable frustration with his living situation and he needs counseling.
  6. Use of alternative question: he had either done this "to hurt someone or that he had to be upset, under stress, and when you add the booze in, you're going to make mistakes.
  7. Use of different interrogators.
  8. Corrections to written statement.
  9. Letter of apology composed at officer's suggestion.
- B. Holding: Under totality of circumstances test, presentation of false evidence combined with implied leniency through minimization techniques rendered confession involuntary. (note: In MA, state must prove voluntariness of confession beyond a reasonable doubt).

## **IX. The Motion Hearing: Examining Law Enforcement**

- A. Set up with innocuous general questions first – officer has had training, training helpful, he follows his training etc.
- B. Ask about police plan – was anyone in charge of the interview and interrogation, what was done to prepare, what they knew about the case & how they found out, who controlled the interview and interrogation.
- C. Establish there is a difference between interview and interrogation and which occurred at what times. Go through interview questions asked.
- D. Go through the process cop engaged in with the suspect. Don't assume the detective is telling things in the correct chronological sequence- recreate the sequence – what is the first thing anyone said...the next thing, then what was said, was anything else said, then what & who said it. Ask what exact words were used. The more "I don't recall" answers the better.
- E. Break down time periods into small units –total time client questioned, in custody, left alone, talked to by detectives, from first contact to reading of Miranda rights, client speaking, client silent.
- F. Ask about tone of voice, emotion, volume, speed & pace, demeanor, posture, accompanying gestures, facial expressions, who came in & out of the room, where they took up position.

- G. Ask about intent of statements – why did you say that, what was your plan or purpose, what did you expect to happen.
- H. Ask about police interpretation of statements- what do you think client meant by that, why so, did you consider any other possibilities, what were they, did you follow up on them.
- I. What bait questions were used, what client was told about the evidence.
- J. What props were brought into the room and used.
- K. What themes were suggested and stories told by the interrogators.
- L. How interrogator handled denials. If they state client was silent, find out why. Did they request he just listen to what they had to say. Persuasive monologues are planned parts of interrogation.
- M. What interrogators told client regarding negative consequences of silence.
- N. What alternative questions were used.
- O. Did client write out his/her own statement, why or why not, was s/he given the choice. If the police wrote statement, exactly when they wrote it, why they chose to write it at a particular time, use of cross-outs, were other notes taken, were other notes preserved.
- P. What was client's demeanor, intoxication, health, mental health, educational level, language and reading ability, prior police contact, emotions, pain, fear. What were client's questions and nonverbal responses. Was contact with family or friends permitted if requested.
- Q. Client's awareness of his rights, how police knew, what efforts they made to find out if it was a full awareness, what training they've had on that point, what would less than a full awareness be, has police officer ever seen that.
- R. Police knowledge of any deficits client has and training and experience in those.
- S. Reasons for and use of breaks.
- T. Impeachment of Officer
  - 1. Many will deny use of Reid techniques. Be careful about language – if they haven't been to the Reid course, they may not call it that or use same terminology.
  - 2. Use the training materials you have from the subpoena. Show each to officer and have him acknowledge that he received these in training and training conformed to what is contained in the materials.

3. If officer claims “on the job” training – establish that others in department went through similar interrogation training.
4. Submit training materials as an exhibit to show that officer’s claim of ignorance or lack of use of these techniques is not consistent with his earlier statements (Remember the beginning of your cross?).

## **X. The Motion Hearing – Your Case**

### **A. Should Client Testify?**

1. Practical Considerations: is client credible, is client version needed to create a complete record, will the judge or appellate court care what client says. Weigh against what prosecutor gains in discovery and on cross examination.
2. Legal Considerations: Prosecutor may not cross-examine the client as to truthfulness of confession. Rogers v. Richmond, 365 U.S. 534 (1961); Defendant’s testimony during suppression motion is not admissible on the merits at trial. It can be used in cross-examination and on rebuttal. Simmons v. U.S., 390 U.S. 377 (1968).
3. Prepare client as if it’s a trial!

### **B. Other Law Enforcement**

1. Ideally, every officer who participated in the interrogation process should testify, regardless of who calls them.
2. Consider calling trainers or others in department to submit information on what was taught in training to show that methods taught conform with what your client says occurred in the interrogation.

### **C. Experts**

1. Experts who examine the client and can testify about their particular vulnerabilities, competency to waive Miranda rights and give a voluntary statement.
2. Social science or research psychologist on interrogation techniques and how current interrogation techniques can cause a confession to be involuntary.

## **XI. The Trial**

### **A. The Law**

1. Exclusion of testimony about the circumstances of a confession is reversible error. Crane v. Kentucky, 476 U.S. 683 (1986).

2. Exclusion of defense expert on interrogation and false confession held reversible error. U.S. v. Hall, 93 F.3d 1337 (7th Cir. 1996); on remand, U.S. v. Hall, 974 F. Supp. 1198 (1997); Miller v. State of Indiana, 770 N.E.2d 763 (2002).
- B. To win a confession case, you must persuade the jury not only the confession is coerced but also that it's false. You must answer the question – why would someone confess to a crime they didn't commit. You must show the jury how and why a false confession can occur.
- C. All phases of the trial are crucial; ask about false confessions in voir dire, make the interrogation techniques and the false confession a centerpiece of your opening statement, have client testify if able to, prepare jury instructions on false confession.
- D. Topics for cross examination of the interrogator.
1. Generalities about job as a detective – observes crime scene, works with partner, interviews witnesses, becomes familiar with the physical evidence. Establish training important and contributes to doing a good job. Get the easy stuff out first.
  2. Go through special training and experience detective has in fooling people, e.g. working undercover in drug investigations.
  3. Go through particularities of the crime scene and detective's familiarity with it, whether from personal observation, witness interviews or shift briefing. Show that the detective knew all the facts and could feed them to defendant for factual part of confession, if confession matches known crime facts; or that the confession does not match known facts/physical evidence.
  4. Establish detective's training and familiarity with training and police literature about obtaining confession. Get detective to agree that he's done well in training and follows what he's been taught.
  5. Go through the specifics of what the detective has been taught in police training that are relevant to the methods used to get the confession in your case. If you have the training materials, also look in testimony using these. Use the information you developed from the motion hearing about the interrogation methods actually used by the detective with your client.
  6. Establish that interrogation of suspects is a crucial part of the job. For example in a homicide case sometimes the only witnesses are the perpetrator and the deceased. Or that witnesses lack credibility.
  7. Point out the cop's only purpose in talking to client was to get a confession – they already had an opinion of his guilt. That's why client was arrested and read Miranda warnings. Use this to show bias and prejudgment. NOTE: Be careful, this can open door to suppressed or inadmissible evidence.

8. Contrast the number of police in room, their size, strength & power compared to client. Paint a word picture of the interrogation room.
9. Use demonstrative evidence to show the coercive environment. Recreate the interrogation room in front of the jury on the courtroom floor with masking tape, chairs using the exact dimensions. Use blow up photographs of the actual room.
10. Show that police controlled the environment and made all decisions. When the client came into and left the interrogation room, was able to eat, sleep, and use the bathroom. Establish that client was isolated from outside world. No access to telephone, family, friends, etc.
11. Detail all the time it took to get the confession, contrast with how long it takes to read the written statement to the jury or to write out the statement. Point out that detective failed to write down both all the things he said while interrogating client and what the client said.
12. Go through Bait Question.
13. Go through the evidence that the police brought into interrogation to induce a confession – from vague items like the thick police case file filled with reports to photos, witness statements, etc.
14. Show that police have specialized legal knowledge and used it to get a confession. Go through the themes that were developed. Point out how the themes downplayed seriousness of crime compared with a much worse version.
15. Use of leading questions in the interrogation.
16. Detail any misrepresentations that were used to induce the confession, like claims of fingerprints, eyewitnesses, etc. Get the detective to agree he did a good job to get client to believe these misrepresentations were true.
17. Alternative question that was used.
18. Impeach with training materials if cop refuses to acknowledge use of Reid-type techniques.
19. Show the opportunity to engage in coercive behavior – physical abuse, threats, promises of leniency and that detective would be in trouble for doing so. They could lose promotions, their job, even be charged with a crime.
20. If client has particular vulnerabilities – mental illness, retardation, etc. – point out either police unaware, ignored it or that they have no expertise in this area (especially if you're calling an expert). Show they didn't modify their conduct – for example they read the client standard Miranda warnings when he only had a first grade reading level. If police knew, show they took advantage of client.

21. Show all the opportunities that were available to take statement in the client's exact words- having client write out statement himself, taping or videotaping and this wasn't done. Point out the language of the statement – that it is the detective's words, not client's.
  22. If the confession NOT taped, point out no taping, they do tape for juveniles and not for adults. If client has vulnerabilities, point out (even if cop will claim he wasn't aware – you'll prove these up later) and compare to a juvenile. Make a big production out of this!
  23. Show that they can't recall many things that happened during the interrogation. The decision not to record resulted in jury not getting all the information.
  24. If the confession is taped – must listen to the tape carefully and contrast with the confession summary if there is one. Analyze closely for use of Reid technique. Count up client's denials, the leading questions, theme development, false evidence, etc. and point these out.
  25. Get acknowledgement that false confessions exist. They can be checked against known physical facts. Physical facts/scientific evidence not susceptible to the procedure of interrogation.
  26. Highlight implausible or inconsistent aspects of the confession. Show the confession doesn't match crime facts- or only matches facts that were known to police at time of interrogation, which may later have been proven to be incorrect.
  27. Show that all investigation ceased once confession obtained.
- E. Client Testimony. Client must be well prepared to testify. Be sure to structure the examination so the jury can easily follow it. Highlight each interrogation technique used and its effect on the client. Client must be well prepared for cross-examination.
- F. Closing – Reenact How the False Confession Occurred.
- G. Jury Instructions. Request cautionary instruction concerning use of unrecorded interrogation. Commonwealth v. DiGiambattista, 813 N.E.2d 516 (MA 2004); see also New Jersey Supreme Court Recom. Comm Jury Instructions <http://www.judiciary.state.nj.us/notices/reports/cookreport.pdf>